



General Assembly

January Session, 2009

**Amendment**

LCO No. 6121

\*HB0653106121HDO\*

Offered by:

REP. FONTANA, 87<sup>th</sup> Dist.

SEN. CRISCO, 17<sup>th</sup> Dist.

To: Subst. House Bill No. 6531

File No. 199

Cal. No. 185

**"AN ACT CLARIFYING POSTCLAIMS UNDERWRITING."**

1 Strike everything after the enacting clause and substitute the  
2 following in lieu thereof:

3 "Section 1. Section 38a-477b of the general statutes is repealed and  
4 the following is substituted in lieu thereof (*Effective October 1, 2009*):

5 (a) As used in this section:

6 (1) "Cancellation" or "cancel" means the unilateral termination of an  
7 insurance policy, contract, evidence of coverage or certificate.

8 (2) "Limitation" or "limit" means the imposition of a restriction of  
9 coverage in an insurance policy, contract, evidence of coverage or  
10 certificate for an existing or preexisting medical condition.

11 (3) "Preexisting conditions provision" has the same meaning as  
12 provided in section 38a-476.

13       (4) "Rescission" or "rescind" means the termination of an insurance  
14       policy, contract, evidence of coverage or certificate by the insurer or  
15       health care center to the date of inception on the basis of (A) such  
16       insurer's or health care center's discovery of a preexisting condition  
17       pursuant to an investigation conducted in accordance with subsection  
18       (e) of this section, or (B) a material misstatement, omission or material  
19       misrepresentation of fact on an insurance application by the insured  
20       that the insurer or health care center relied upon to its detriment.

21       [(a)] (b) (1) Unless approval is granted pursuant to subsection [(b)]  
22       (d) of this section, no insurer or health care center [may] shall rescind,  
23       cancel or limit any policy of insurance, contract, evidence of coverage  
24       or certificate [that provides] providing coverage of the type specified  
25       in subdivisions (1), (2), (4), (6), (10), (11) and (12) of section 38a-469,  
26       and having a duration of one year or more, on the basis of written  
27       information submitted on [,] or with or omitted from an insurance  
28       application by the insured if the insurer or health care center failed to  
29       complete medical underwriting and resolve all reasonable medical  
30       questions related to the written information submitted on [,] or with or  
31       omitted from the insurance application before issuing the policy,  
32       contract, evidence of coverage or certificate.

33       (2) Unless approval is granted pursuant to subsection (d) of this  
34       section, no insurer or health care center shall rescind, cancel or limit  
35       any policy of insurance, contract, evidence of coverage or certificate  
36       providing coverage of the type specified in subdivisions (1), (2), (4), (6),  
37       (10), (11) and (12) of section 38a-469, and having a duration of less than  
38       one year, including short-term health insurance issued on a  
39       nonrenewable basis with a duration of six months or less, on the basis  
40       of written information submitted on or with or omitted from an  
41       insurance application by the insured.

42       (c) No insurer or health care center [may] shall rescind, cancel or  
43       limit any such policy, contract, evidence of coverage or certificate more  
44       than two years after the effective date of the policy, contract, evidence  
45       of coverage or certificate.

46        [(b)] (d) An insurer or health care center shall apply for approval of  
47 such rescission, cancellation or limitation by submitting such written  
48 information to the Insurance Commissioner on an application in such  
49 form as the commissioner prescribes. Such insurer or health care center  
50 shall provide a copy of the application for such approval to the insured  
51 or the insured's representative. Not later than seven business days  
52 after receipt of the application for such approval, the insured or the  
53 insured's representative shall have an opportunity to review such  
54 application and respond and submit relevant information to the  
55 commissioner with respect to such application. Not later than fifteen  
56 business days after the submission of information by the insured or the  
57 insured's representative, the commissioner shall issue a written  
58 decision on such application. The commissioner may approve such  
59 rescission, cancellation or limitation if the commissioner finds that (1)  
60 the written information submitted on or with the insurance application  
61 was false at the time such application was made and the insured or  
62 such insured's representative knew or should have known of the  
63 falsity therein, and such submission materially affects the risk or the  
64 hazard assumed by the insurer or health care center, or (2) the  
65 information omitted from the insurance application was knowingly  
66 omitted by the insured or such insured's representative, or the insured  
67 or such insured's representative should have known of such omission,  
68 and such omission materially affects the risk or the hazard assumed by  
69 the insurer or health care center. Such decision shall be mailed to the  
70 insured, the insured's representative, if any, and the insurer or health  
71 care center.

72        (e) When investigating a suspected preexisting condition that was  
73 not disclosed by an insured, an insurer or health care center shall limit  
74 its investigation based on a submitted claim to (1) issues having a  
75 direct relationship to the alleged preexisting condition that is the  
76 subject of the claim, and (2) the period preceding the effective date of  
77 the policy, contract, evidence of coverage or certificate permitted to be  
78 limited or excluded under the preexisting conditions provision of such  
79 policy, contract, evidence of coverage or certificate.

80 [(c)] (f) Notwithstanding the provisions of chapter 54, any insurer or  
81 insured aggrieved by any decision by the commissioner under  
82 subsection [(b)] (d) of this section may, [within] not later than thirty  
83 days after notice of the commissioner's decision is mailed to such  
84 insurer and insured, take an appeal therefrom to the superior court for  
85 the judicial district of Hartford, which shall be accompanied by a  
86 citation to the commissioner to appear before said court. Such citation  
87 shall be signed by the same authority, and such appeal shall be  
88 returnable at the same time and served and returned in the same  
89 manner, as is required in case of a summons in a civil action. Said court  
90 may grant such relief as may be equitable.

91 (g) An insurer or health care center that accepts a telephonic  
92 application for individual health insurance coverage shall: (1) Provide  
93 to the applicant, prior to the completion of the application process,  
94 disclosure of (A) the maximum duration of such policy or contract, (B)  
95 any preexisting conditions provisions and an accurate description of  
96 each such provision, (C) the relevant exclusionary periods pertaining  
97 to such preexisting conditions, and (D) the amount of the monthly  
98 premium; (2) retain for two years after the effective date of the policy  
99 or contract, in a readily retrievable format, a recording of the  
100 applicant's complete telephonic application process; (3) mail the  
101 applicant a letter that contains a copy of such applicant's completed  
102 application, which may include confirmation of such applicant's  
103 agreement to the maximum duration of such policy or contract, the  
104 preexisting conditions provisions specified in such policy or contract  
105 and the relevant exclusionary periods pertaining to such preexisting  
106 conditions and the monthly premium specified for such policy or  
107 contract. Such letter shall include a notice that such applicant shall be  
108 bound by such agreement unless such applicant rescinds such  
109 agreement in writing not later than ten days after receipt of such letter;  
110 and (4) retain a copy of such letter and such rescission, if applicable,  
111 for two years after the effective date of the policy or contract. The  
112 requirements of this subsection shall not apply to telephonic  
113 applications for Medicare supplement policies.

114     (h) Any insurance producer or agent who completes or assists in the  
115     completion of an application for insurance and an insured who signs  
116     such application or does not object to information submitted on or  
117     with or omitted from such application shall be jointly and severally  
118     liable for any claims resulting from any information knowingly  
119     omitted or misrepresented by such producer or agent in such  
120     application.

121     [(d)] (i) The Insurance Commissioner may adopt regulations, in  
122     accordance with chapter 54, to implement the provisions of this  
123     section."

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2009</i>	38a-477b